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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/807,997	08/08/2001	Yoichi Ozawa	206542US0PCT	7208

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OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.
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EXAMINER

WEIER, ANTHONY J

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 10/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/807,997	Applicant(s) OZAWA ET AL	
	Examiner Anthony Weier	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☒ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ | 6) <input type="checkbox"/> Other: |

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1. Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, "the fine structure portions" lacks antecedent basis.

In claim 3, it is confusing as to whether the "husk" choice pertains to just the sesame seed alternative.

In claim 11, "the material" lacks antecedent basis.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless —

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1-5 and 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by either one of Tunoda or JP 55-61776 and under 35 U.S. C. 102(e) as being anticipated by Nakatani et al (U.S. Patent No. 6326035).

Tunoda , Nakatani et al, and JP 55-61776 each disclose a method for fractionating soybean material by first crushing same and then classifying material of a specific tissue therein including the hull and germ.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakatani et al.

Nakatani et al further discloses reducing said soybean material from an oil and fat extraction cake (see col. 3, lines 1-8).

4. Claim 11-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tunoda.

It should be noted that the finely ground soybean may be used in a variety of food items (col. 4, lines 29-32) and would inherently have the properties that would be needed to use same as a culture medium and filler for shaping containers. Tunoda also discloses the use of air blasting with grinders in crushing and separating said soybeans (as called for in instant claim 14; see col. 3, lines 33-44).

The claims further call for the powder product to have 50% of the grain of particular size. Although Tunoda does not specifically set forth these values, the determination of same would have been well within the purview of one having ordinary skill in the art, and, absent a showing of unexpected results, it would have been obvious for such a skilled artisan to arrive at such values as a matter of preference. The claims further call for the powder product to have 50% of the grain of particular size.

5. Claim 11-13 and 15-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over either one of Nakatani et al or JP 55-61776.

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Although Nakatani et al and JP 55-61776 do not specifically set forth the claimed values of, for example, claims 11 and 13, the determination of same would have been well within the purview of one having ordinary skill in the art, and, absent a showing of unexpected results, it would have been obvious for such a skilled artisan to arrive at such values as a matter of preference.

It should be noted that the finely ground would inherently have the properties that would be needed to use same as a culture medium, food, and filler for shaping containers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 703-308-3846. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3602 for regular communications and 703-305-3602 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

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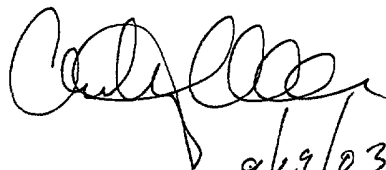
Anthony Weier

Primary Examiner

Art Unit 1761

Anthony Weier

September 29, 2003



9/29/03